

PATENT**Serial No. 09/703,699****Attorney Docket No. 2000-0020 (1014-068)****REMARKS**

Each of claims 1, 2, 5, 6, and 8 has been amended for reasons unrelated to patentability, including at least one of: to explicitly present one or more elements implicit in the claim as originally written when viewed in light of the specification thereby not narrowing the scope of the claim, to detect infringement more easily, to enlarge the scope of infringement, to cover different kinds of infringement (direct, indirect, contributory, induced, and/or importation, etc.), to expedite the issuance of a claim of particular current licensing interest, to target the claim to a party currently interested in licensing certain embodiments, to enlarge the royalty base of the claim, to cover a particular product or person in the marketplace, and/or to target the claim to a particular industry.

Claims 9 -20 have been added.

Claims 1-20 are now pending in this application. Claims 1, 5, and 9 are the independent claims.

I. The Anticipation Rejections

To anticipate expressly, the "invention must have been known to the art in the detail of the claim; that is, all of the elements and limitations of the claim must be shown in a single prior art reference, arranged as in the claim". *Karsten Mfg. Corp. v. Cleveland Golf Co.*, 242 F.3d 1376, 1383, 58 USPQ2d 1286, 1291 (Fed. Cir. 2001). The single reference must describe the claimed subject matter "with sufficient clarity and detail to establish that the subject matter existed in the prior art and that its existence was recognized by persons of ordinary skill in the field of the invention". *Crown Operations Int'l, LTD v. Solutia Inc.*, 289 F.3d 1367, 1375, 62 USPQ2d 1917, 1921 (Fed. Cir. 2002). Moreover, the prior art reference must be sufficient to enable one with ordinary skill in the art to practice the claimed invention. *In re Borst*, 345 F.2d 851, 855, 145 USPQ 554, 557 (C.C.P.A. 1965), *cert. denied*, 382 U.S. 973 (1966); *Amgen, Inc. v.*

PATENT**Serial No. 09/703,699****Attorney Docket No. 2000-0020 (1014-068)**

Hoechst Marion Roussel, Inc., 314 F.3d 1313, 1354, 65 USPQ2d 1385, 1416 (Fed. Cir. 2003)
("A claimed invention cannot be anticipated by a prior art reference if the allegedly anticipatory disclosures cited as prior art are not enabled.")

Claims 1-2 and 4

Claims 1-2 and 4 were rejected as anticipated under 35 U.S.C. 102(e). In support of the rejection, Lockhart (U.S. Patent No. 6,189,035) was cited. This rejection is respectfully traversed.

Lockhart fails to establish a prima facie case of anticipation. *See* MPEP 2131.

Claim 1, from which each of claims 2 and 4 depends, recites "sending a message to a second IP data switching system, said message adapted to instruct said second IP data switching system to discard packets from said particular IP source, wherein said second IP data switching system is not a source system for said packets". Lockhart does not teach expressly or inherently "sending a message to a second IP data switching system, said message adapted to instruct said second IP data switching system to discard packets from said particular IP source, wherein said second IP data switching system is not a source system for said packets". Accordingly, it is respectfully submitted that the rejection of claim 1 is unsupported by Lockhart and should be withdrawn. Also, the rejection of claims 2 and 4, each ultimately depending from independent claim 1, is unsupported by Lockhart and also should be withdrawn.

Claim 5

Claim 5 was rejected as anticipated under 35 U.S.C. 102(b). In support of the rejection, Nagami (U.S. Patent No. 5,835,710) was cited. This rejection is respectfully traversed.

Nagami fails to establish a prima facie case of anticipation. *See* MPEP 2131.

Specifically, claim 5 recites "sending a message to a second IP data switching system, said message adapted to instruct said second IP data switching system to discard packets routable to

PATENT**Serial No. 09/703,699****Attorney Docket No. 2000-0020 (1014-068)**

said particular IP destination, wherein said second IP data switching system is not a source system for said packets". Nagami does not teach expressly or inherently "sending a message to a second IP data switching system, said message adapted to instruct said second IP data switching system to discard packets routable to said particular IP destination, wherein said second IP data switching system is not a source system for said packets". Accordingly, it is respectfully submitted that the rejection of claim 5 is unsupported by Nagami and should be withdrawn.

II. The Obviousness Rejection

Claim 3 was rejected under 35 U.S.C. 103(a) as being unpatentable over Lockhart (U.S. Patent No. 6,189,035) in view of Jain (U.S. Patent No. 5,491,801). These rejections are respectfully traversed.

Claims 5-6 were rejected under 35 U.S.C. 103(a) as being unpatentable over Lockhart (U.S. Patent No. 6,189,035) in view of Teraslinna (U.S. Patent No. 5,706,279). These rejections are respectfully traversed.

Claims 7-8 were rejected under 35 U.S.C. 103(a) as being unpatentable over Lockhart (U.S. Patent No. 6,189,035) in view of Teraslinna (U.S. Patent No. 5,706,279) and in further view of Jain (U.S. Patent No. 5,491,801). These rejections are respectfully traversed.

None of the cited references, either alone or in any combination, establish a *prima facie* case of obviousness. "To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure." See MPEP 2143.

PATENT**Serial No. 09/703,699****Attorney Docket No. 2000-0020 (1014-068)****Claim 3**

Jain allegedly recites "the routers send special messages, commonly referred to as 'choke packets' or 'source quench packets', **to the sources**, requiring the sources to reduce their traffic on the network". See col. 3 lines 62-65.

Claim 1, from which claim 3 depends, recites "sending a message to a second IP data switching system, said message adapted to instruct said second IP data switching system to discard packets from said particular IP source, wherein said second IP data switching system is **not a source system for said packets**". Jain does not teach expressly or inherently "sending a message to a second IP data switching system, said message adapted to instruct said second IP data switching system to discard packets from said particular IP source, wherein said second IP data switching system is **not a source system for said packets**". Lockhart does not overcome the deficiencies of Jain

Accordingly, it is respectfully submitted that the rejection of claim 3, ultimately dependent upon independent claim 1 is unsupported by Lockhart in view of Jain and should be withdrawn.

Claims 5-8

Independent claim 5 recites "sending a message to a second IP data switching system, said message adapted to instruct said second IP data switching system to discard packets routable to said particular IP destination, wherein said second IP data switching system is not a source system for said packets".

Lockhart does not expressly or inherently teach or suggest "sending a message to a second IP data switching system, said message adapted to instruct said second IP data switching system to discard packets routable to said particular IP destination, wherein said second IP data

PATENT**Serial No. 09/703,699****Attorney Docket No. 2000-0020 (1014-068)**

switching system is not a source system for said packets". Neither Teraslinna nor Jain, considered alone or in combination, overcomes the deficiencies of Lockhart.

Thus, even if there were motivation or suggestion to modify or combine the cited references (an assumption with which the applicant disagrees), and even if there were a reasonable expectation of success in combining or modify the cited references (another assumption with which the applicant disagrees), the cited references still do not expressly or inherently teach or suggest every limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness.

Because no *prima facie* rejection of any independent claim has been presented, no *prima facie* rejection of any dependent claim can be properly asserted. Consequently, reconsideration and withdrawal of these rejections is respectfully requested.

Accordingly, it is respectfully submitted that the cited references do not render obvious independent claim 5. Furthermore, because this independent claim is not rendered obvious by the cited references, it stands that claims 6-8, each ultimately depending from this allowable claim, are also not rendered obvious by the cited references.

III. Allowable Subject Matter

The following is a statement of reasons for the indication of allowable subject matter:

"none of the references of record alone or in combination disclose or suggest the combination of limitations found in the independent claims. Namely: claims 1-4 are allowable because none of the references of record alone or in combination disclose or suggest 'sending a message to a second IP data switching system, said message adapted to instruct said second IP data switching system to discard packets from said particular IP source, wherein said second IP data switching system is not a source system for said packets';

PATENT**Serial No. 09/703,699****Attorney Docket No. 2000-0020 (1014-068)**

claims 5-8 and 16-20 are allowable because none of the references of record alone or in combination disclose or suggest 'sending a message to a second IP data switching system, said message adapted to instruct said second IP data switching system to discard packets routable to said particular IP destination, wherein said second IP data switching system is not a source system for said packets'; and claims 9-15 are allowable because none of the references of record alone or in combination disclose or suggest 'sending a message to a second IP data switching system, said message adapted to instruct said second IP data switching system to discard packets from said particular IP source, wherein said second IP data switching system is not a source system for said packets.'"

PATENT

Serial No. 09/703,699

Attorney Docket No. 2000-0020 (1014-068)

CONCLUSION

It is respectfully submitted that, in view of the foregoing amendments and remarks, the application as amended is in clear condition for allowance. Reconsideration, withdrawal of all grounds of rejection, and issuance of a Notice of Allowance are earnestly solicited.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. 1.16 or 1.17 to Deposit Account No. 50-2504. The Examiner is invited to contact the undersigned at 434-972-9988 to discuss any matter regarding this application.

Respectfully submitted,

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Date: 5 Jan 2005



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